



City of Emeryville

CALIFORNIA

PROFESSIONAL SERVICES CONTRACT

EIGHTEENTH AMENDMENT

THIS EIGHTEENTH AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT ("Amendment") is effective as of _____ (the "Effective Date"), by and between **THE CITY OF EMERYVILLE AS SUCCESSOR AGENCY TO THE EMERYVILLE REDEVELOPMENT AGENCY**, a municipal corporation, ("Successor Agency") and **EKI ENVIRONMENT & WATER, INC.** ("Contractor"), individually referred to as a "Party" and collectively as the "Parties".

WITNESSETH THAT

WHEREAS, the Successor Agency and Contractor entered into a Professional Services Contract dated July 14, 2004 ("Contract") for the purpose of retaining the services of Contractor to provide to complete a Phase I Environmental Site Assessment of Site B; and

WHEREAS, commencing in 2004, the Emeryville Redevelopment Agency ("Agency") undertook actions to redevelop those certain parcels located between the Bay Street development and the Powell Street overpass for highest and best uses; and

WHEREAS, the development area is made up of five parcels; namely, Assessor Parcel Nos. 049-1321-001-02, 049-1321-001-04, 049-1321-003-02, 049-1321-004-04, and 949-1321-005-00 [collectively referred to as South Bayfront Site B ("Site B")]; and

WHEREAS, the Agency retained the Consultant to complete a Phase I Environmental Site Assessment of Site B, and such work was completed and summarized in a report dated July 14, 2004 which determined a further Phase II Environmental Site Assessment was required; and

WHEREAS, thereafter the Agency approved a Professional Services Agreement with the Consultant to complete a Phase II Environmental Site Assessment of Site B including soil and groundwater sampling and development of a remediation cost estimate and, after said work was completed, the Agency approved a First Amendment to Professional Services Agreement for further investigative work to fill in data gaps; and

WHEREAS, the Agency then approved a Second Amendment to the Professional Services Agreement for additional data gap investigations, preparation of a human health risk assessment ("HHRA") and a remedial investigation ("RI") report for submittal to the California Environmental Protection Agency, Department of Toxic Substances

FOR CITY USE ONLY

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| Contract No. | | CIP No. | |
| Resolution No. | | Project No. | |

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Control ("DTSC"); and

WHEREAS, the Consultant completed a draft RI/HHRA report in June 2006 and submitted said report to DTSC, who identified certain additional data gaps; and

WHEREAS, the Agency approved a Third Amendment to the Professional Services Agreement to address these additional data gaps as part of the revision of the RI/HHRA and to prepare a draft Feasibility Study/Remedial Action Plan ("Draft FS/RAP") and draft Remedial Design and Implementation Plan ("Draft RDIP"); and

WHEREAS, the Consultant submitted a revised RI/HHRA to DTSC in May 31, 2007; completed the Draft FS/RAP, which was approved by the Agency on March 3, 2008 after a duly noticed public comment period; submitted a Draft RDIP for review by DTSC; and prepared draft plans and specifications for use in soliciting bids from contractors to implement the remedial plan; and

WHEREAS, the Agency approved a Fourth Amendment to the Professional Services Agreement for ongoing environmental consulting services that would be needed to continue the development of the remedial activities on Site B; and

WHEREAS, upon approval of the RDIP by DTSC, the Agency publicly bid and thereafter awarded a contract to Pacific States Environmental Contractors, Inc. to undertake the remediation excavation activities and also approved a Fifth Amendment to the Professional Services Agreement to provide environmental consulting services for initial implementation of the remedial plan for Site B; and

WHEREAS, on December 16, 2008, the Agency approved a Sixth Amendment to the Professional Services Agreement for the completion of the RDIP and ongoing services related to the initial evaluation of potential additional groundwater remediation measures once the excavations were completed; and

WHEREAS, on April 21, 2009, the Agency approved a Seventh Amendment to the Professional Services Agreement for ongoing and additional work related to the implementation of the soil remedial plan through June 2009 and initial work regarding the implementation of post-soil remediation activities; and

WHEREAS, on July 21, 2009, the Agency approved an Eighth Amendment to the Professional Services Agreement for ongoing and additional work related to the implementation of the soil remedial plan through August 2009 and development of a post-soil remediation groundwater monitoring plan in accordance with the FS/RAP; and

WHEREAS, on March 2, 2010, the Agency approved a Ninth Amendment to the Professional Services Agreement for work related to the post-soil remediation groundwater activities in accordance with the FS/RAP; and

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WHEREAS, on September 21, 2010, the Agency approved a Tenth Amendment to the Professional Services Agreement for additional environmental consulting services related to continuing field implementation of post-soil remediation groundwater activities and an on-site groundwater pilot study; and

WHEREAS, the results of the on site groundwater pilot study were favorable in terms of addressing groundwater impacts and additional environmental consulting services were identified and authorized on April 5, 2011 pursuant to an Eleventh Amendment to the Professional Services Agreement which provided for: (1) project management including processing of an amendment to the FS/RAP in order to designate in-situ remediation as the primary groundwater remedial approach; (2) ongoing groundwater monitoring for the period of April 2011 through April 2013; (3) Implementation of in-situ on-site groundwater remediation on Site B; (4) Implementation of in-situ groundwater remediation in the east Powell Street area; (5) Investigation of additional potential off site sources of VOCs to Site Groundwater; and (6) Preparation of Environmental Risk Management Plan and provide support during Site B redevelopment; and

WHEREAS, in accordance with the services authorized pursuant to the Eleventh Amendment, the amendment to the FS/RAP for the Site B groundwater remedial approach was prepared and approved by DTSC for dissemination for public comment for the period of May 15, 2013 through June 14, 2013; ongoing groundwater monitoring has been conducted; implementation of in-situ groundwater remediation in the east Powell Street area has been conducted and completed; and investigation of additional off-site sources of VOCs to Site B has also been undertaken; and

WHEREAS, subsequent to the authorization and execution of the Eleventh Amendment on April 5, 2011, the Agency was dissolved pursuant to AB X1 26 (the "Dissolution Act") effective as of February 1, 2012; and

WHEREAS, in accordance with the Dissolution Act, the City Council of the City of Emeryville elected to have the City of Emeryville serve as the Successor Agency to the Emeryville Redevelopment Agency ("Successor Agency"); and

WHEREAS, the remediation of the upper/shallow groundwater zone was conducted in late summer/early fall 2013 and after two rounds of post remedial groundwater sampling events in early 2014, the Final Shallow Groundwater Remediation Completion Report was approved on November 25, 2014, finding no need for supplemental remedial injections necessary at this time; and

WHEREAS, based on the data available, the Successor Agency has maintained that impacts to the lower/deeper groundwater zone on Site B were from an off-site source and thus remedial efforts to address the contamination was the responsibility of another party; and

WHEREAS, notwithstanding the favorable results of the remedial activities pertaining to the upper/shallow groundwater zone, the sampling data following the on-site injections

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to the upper/shallow groundwater zone has shown an effect to the lower/deeper zone, and hence the possibility that the impacts to the lower/deeper groundwater zone on Site B emanate from Site B; and

WHEREAS, the Successor Agency was directed by DTSC in September 2014 to undertake activities to address the lower/deeper groundwater zone on Site B and/or provide DTSC with more definitive proof that the impacts to the lower/deeper groundwater zone on Site B are from an off-site source; and

WHEREAS, on January 20, 2015, a Thirteenth Amendment to the Professional Services Agreement was approved by the Successor Agency to provide additional time through June 30, 2017 to commence activities to further characterize contamination in the lower/deeper groundwater zone and investigate the origins thereof, and to thereafter prepare and process an amendment to the FS/RAP to address said contamination in the lower/deeper groundwater zone and implement said remedy, if necessary; and

WHEREAS, at the time the Thirteenth Amendment was presented there remained approximately \$520,000 in the budget under EKI's contract to commence the work of characterizing the deeper zone groundwater impacts at Site B and investigating potential off-site sources of that contamination as required by DTSC; and

WHEREAS, in April 2015, DTSC approved the work plan for the required characterization/investigative work needed to be undertaken for Site B and, pursuant to additional funding provided by a Fourteenth Amendment approved on June 16, 2015, the Consultant has moved forward with the characterization/investigative work in concert with similar work required for the corporation yard site and completed its field activities during the summer/early fall of 2015; and

WHEREAS, as required by DTSC, additional funds are required to undertake unanticipated additional injections of amendment and microbes to aid the degradation of vinyl chloride in shallow groundwater, as well as the full scale injections to deeper groundwater now being required by DTSC; thereafter there will be the need to prepare the environmental risk management plan to be implemented during future development, the land use covenant, as well as the costs of long-term groundwater monitoring activities; and

WHEREAS, the Fifteenth Amendment was to augment the contract budget such that there was sufficient money available to cover the costs of the preparation of the investigation report, an amendment to the FS/RAP to address impacts to the deeper groundwater zone, supplemental injections to shallow groundwater, full scale injections to the deeper groundwater zone, installation of permanent wells along the southern and easterly boundaries of the Site to aid with future supplemental injections to both shallow and deep groundwater zones, and then three biennial rounds of injections to the shallow and deep groundwater zones in future years, if warranted, the costs to prepare the Environmental Risk Management Plan to be implemented during future Site B development, the land use covenant, as well as the costs of long-term groundwater; and

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WHEREAS, the Sixteenth Amendment was to augment the contract budget such that there is sufficient money available to cover the costs of the semi annual groundwater monitoring, preparing semiannual groundwater reports, general environmental project management services for Site B; and

WHEREAS, the Seventeenth Amendment was to augment the contract budget such that there is sufficient money available to cover the costs of the semi-annual groundwater monitoring, preparing semi annual reports, conducting supplemental ERD injections, providing on-going project management services, and covering the costs for long-term groundwater monitoring through June 30, 2025;and

WHEREAS, the intent of the Eighteenth Amendment is to augment the contract budget such that there is sufficient money available to cover the costs of the semi-annual groundwater monitoring, preparing semi annual reports, conducting supplemental ERD injections, providing on-going project management services, and covering the costs for long-term groundwater monitoring through June 30, 2026;and

WHEREAS, the Successor Agency finds that specialized knowledge, skills, and training are necessary to render the environmental consulting services required for the continued implementation of post-soil remediation of groundwater on Site B; and

WHEREAS, the Successor Agency has reviewed the original Professional Services Agreement and preceding Seventeenth Amendment, determined that the Consultant is qualified by training and experience to render such services, and prepared a Eightteenth Amendment to the Professional Services Agreement to increase the compensation by \$1,145,000 for a total not to exceed amount of \$18,228,000; and

WHEREAS, the Successor Agency and Contractor desire to amend the Contract; and

WHEREAS, the public interest will be served by this Amendment.

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

1. AMENDMENT

The Parties agree to amend the Contract as checked below:

1.1 Exhibit A

- Exhibit A of the Contract is hereby amended in its entirety and replaced with **Exhibit A-***Revision Number*;

OR

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- Exhibit A of the Contract is hereby amended to include the provisions of **Exhibit A-Eighteen**, attached hereto and incorporated herein by this reference.

1.2 Termination Date

- The Parties desire to extend the termination date. Section 1.3 of the Contract is hereby amended to extend the termination date to **JUNE 30, 2026**.

1.3 Total Compensation Amount

- The Parties desire to increase the Total Compensation Amount as set forth in Section 3.2 of the Contract by **ONE MILLION ONE HUNDRED FORTY FIVE THOUSAND DOLLARS AND NO CENTS (\$1,145,000)**. The total amount paid under the Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **EIGHTEEN MILLION TWO HUNDRED TWENTY EIGHT THOUSAND DOLLARS AND NO CENTS (\$18,228,000)**.

2. CONTINUING EFFECT OF CONTRACT

Except as amended by this Amendment, all other provisions of the Contract remain in full force and effect and shall govern the actions of the Parties under this Amendment. From and after the date of this Amendment, whenever the term “Contract” appears in the Contract, it shall mean the Contract as amended by this Amendment.

3. ADEQUATE CONSIDERATION

The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

4. SEVERABILITY

If any portion of this Amendment is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

5. WAIVER

The Successor Agency’s failure to enforce any provision of this Amendment or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

SIGNATURES ON FOLLOWING PAGE

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6. SIGNATURE PAGE TO PROFESSIONAL SERVICES CONTRACT SEVENTEENTH AMENDMENT

IN WITNESS WHEREOF the Successor Agency and the Contractor have executed this Contract, which shall become effective as of the date first written above.

Approved As To Form:

DocuSigned by:
John Kennedy

General Counsel

Dated:

CITY OF EMERYVILLE AS SUCCESSOR AGENCY TO THE EMERYVILLE REDEVELOPMENT AGENCY

Executive Director

Dated:

EKI ENVIRONMENT & WATER,NC.

DocuSigned by:
[Signature]

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(Signature)

Earl James, P.G. Vice President

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| <i>Attach: W-9 Form</i> | <i>Attach: Business License Certificate</i> | <i>Attach: Insurance Certificate and Endorsements</i> |
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